

The relationship between direct regulation of an international sales contract and that under the conflict of laws rules (Master's degree thesis)

Abstract

The purpose of my thesis is to analyse the relation between the regulation based on the CISG and the regulations based on the conflict of laws rules. The reason for my research is the important role that the unified CISG regulation plays in the international commerce and the complicated legal issues connected with its sphere of application in particular at the moment, when the nature of conflict of laws rules changes throughout Europe.

My thesis is based mainly on foreign sources, German, English and Spanish in particular. It includes a representative sample of relevant court decisions and arbitral awards as well. Czech sources are used especially when dealing with theoretical and general question. Occasionally some Czech court decisions are included.

The thesis is composed of three chapters, proceeding from the general issues to the specific ones.

Chapter One deals with the most general questions of relation between CISG and conflict of laws rules. The chapter is subdivided into four parts. Part One describes the relation between CISG and conflict of laws rules in respect of their legal power and explains that CISG has to be applied before the conflict of laws rules, as it is more specific. Part Two deals with the mutual relation of individual sources of conflict of laws rules. Part three deals with the specific issues connected with interpretation of CISG. The fourth part explains the role of usages according to CISG and Czech Commercial Code.

Chapter Two examines the scope of application of the CISG. It is contemplated as a commentary on on the respective articles of the CISG. The chapter consists of four parts. Part One focuses on the positive definition of the scope of application of the CISG in Art. 1. Part Two investigates its negative definition according to Art. 2. Part Three addresses the delimitation of the sales contract from other contracts, such as on the provision of services, based on Art. 3 of the CISG. In the fourth part of this chapter the thesis deals with scope of issues regulated by the CISG.

Chapter Three is subdivided into four parts parts and provides a brief outline of the content of the relevant conflict of laws rules. The individual parts deal with currently valid Czech Act on International Private and Procedural Law, The Rome Convention, The Rome I Regulation and the proposal of the new Czech Act on International Private and Procedural Law.

The conclusions are drawn at the end of individual chapters or their parts and a summary conclusion is included at the end of the thesis. Due to the theme of the thesis it does not include a single proposal, as it is descriptive, or general conclusion, as its subject is quite complex, on the relation of CISG and the conflict of laws rules, but rather a recommendation of differentiated approach that respects the principle of uniformity in the interpretation of the CISG.